

---

---

## SENATE BILL No. 235

---

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2-9; IC 10-13-3-35; IC 34-26-5; IC 35-33-8; IC 35-38; IC 35-46-1-15.1.

**Synopsis:** Stay away orders. Requires the division of state court administration to develop and adopt stay away orders. Provides that a person who violates a stay away order as a condition of pretrial release or as a condition of probation commits invasion of privacy. Provides that a protective order includes a stay away order for purposes of the protective order depository. Imposes duties on the clerk of a court and for law enforcement agencies concerning stay away orders. Provides that a court may issue a stay away order as a condition of bail or probation. Provides that a court may consider the violation of a stay away order as an aggravating circumstance.

**Effective:** July 1, 2009.

---

---

### Merritt

---

---

January 7, 2009, read first time and referred to Committee on Judiciary.

---

---

C  
o  
p  
y



First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 235

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-2-9-2.1, AS AMENDED BY P.L.52-2007,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 2.1. (a) As used in this chapter, "protective order"  
4 means:  
5 (1) a protective order issued under IC 34-26-5 (or, if the order  
6 involved a family or household member, IC 34-26-2-12(1)(A),  
7 IC 34-26-2-12(1)(B), IC 34-26-2-12(1)(C),  
8 IC 34-4-5.1-5(a)(1)(A), IC 34-4-5.1-5(a)(1)(B), or  
9 IC 34-4-5.1-5(a)(1)(C) before their repeal);  
10 (2) an ex parte protective order issued under IC 34-26-5 (or, if the  
11 order involved a family or household member, an emergency  
12 protective order issued under IC 34-26-2-6(1), IC 34-26-2-6(2),  
13 or IC 34-26-2-6(3) or IC 34-4-5.1-2.3(a)(1)(A),  
14 IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) before their  
15 repeal);  
16 (3) a protective order issued under IC 31-15-4-1 (or  
17 IC 31-1-11.5-7(b)(2), IC 31-1-11.5-7(b)(3), IC 31-16-4-2(a)(2),



C  
o  
p  
y

or IC 31-16-4-2(a)(3) before their repeal);

(4) a dispositional decree containing a no contact order issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order containing a no contact order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal);

(5) a no contact order **or a stay away order** issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion;

(6) a no contact order **or a stay away order** issued as a condition of probation;

(7) a protective order issued under IC 31-15-5-1 (or IC 31-1-11.5-8.2 or IC 31-16-5 before their repeal);

(8) a protective order issued under IC 31-14-16-1 in a paternity action;

(9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(10) a workplace violence restraining order issued under IC 34-26-6; or

(11) a child protective order issued under IC 31-34-2.3.

(b) Whenever a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order is issued by an Indiana court, the Indiana court must caption the order in a manner that indicates the type of order issued and the section of the Indiana Code that authorizes the protective order, no contact order, **stay away order**, or workplace violence restraining order. The Indiana court shall also place on the order the court's hours of operation and telephone number with area code.

SECTION 2. IC 5-2-9-5, AS AMENDED BY P.L.52-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. A depository is established in the office of each sheriff and law enforcement agency in Indiana for the purpose of collecting, maintaining, and retaining the following:

(1) Protective orders.

(2) No contact orders.

(3) Workplace violence restraining orders.

(4) Child protective orders.

**(5) Stay away orders.**

SECTION 3. IC 5-2-9-6, AS AMENDED BY P.L.52-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The clerk of a court that issues a protective

C  
o  
p  
y



order, no contact order, workplace violence restraining order, **stay away order**, or child protective order shall provide a copy of the order to the following:

(1) Each party.

(2) A law enforcement agency of the municipality in which the protected person resides. If a person and an employer are:

(A) both protected by an order under this section; and

(B) domiciled in different municipalities;

the clerk shall send a copy of the order to the law enforcement agency of the municipality in which the person resides and the employer is located.

(3) If the protected person, including an employer, is not domiciled in a municipality, the sheriff of the county in which the protected person resides.

(b) The clerk of a court that issues a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order or the clerk of a court in which a petition is filed shall:

(1) maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration;

(2) provide a copy of the confidential form that accompanies the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order to: ~~the following:~~

(A) the sheriff of the county in which the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order was issued;

(B) the law enforcement agency of the municipality, if any, in which the protected person, including an employer, is domiciled; **and**

(C) any other sheriff or law enforcement agency designated in the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order that has jurisdiction over the area in which a protected person, including an employer, may be located or protected; and

(3) after receiving the return of service information, transmit all return of service information to each sheriff and law enforcement agency required under subdivision (2).

(c) A sheriff or law enforcement agency that receives a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order under subsection (a) and a

C  
o  
p  
y



confidential form under subsection (b) shall:

- (1) maintain a copy of the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order in the depository established under this chapter;
- (2) enter:

(A) the date and time the sheriff or law enforcement agency receives the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order;

(B) the location of the person who is subject to the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order, if reasonably ascertainable from the information received;

(C) the name and identification number of the officer who serves the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order;

(D) the manner in which the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order is served;

(E) the name of the petitioner and any other protected parties;

(F) the name, Social Security number, date of birth, and physical description of the person who is the subject of the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order, if reasonably ascertainable from the information received;

(G) the date the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order expires;

(H) a caution indicator stating whether a person who is the subject of the protective order, no contact order, r workplace violence restraining order, **stay away order**, or child protective order is believed to be armed and dangerous, if reasonably ascertainable from the information received; and

(I) if furnished, a Brady record indicator stating whether a person who is the subject of the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order is prohibited from purchasing or possessing a firearm or ammunition under federal law, if reasonably ascertainable from the information received;

on the copy of the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective

C  
o  
p  
y



order or the confidential form; and

(3) establish a confidential file in which a confidential form that contains information concerning a protected person is kept.

(d) A protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order may be removed from the depository established under this chapter only if the sheriff or law enforcement agency that administers the depository receives:

(1) a notice of termination on a form prescribed or approved by the division of state court administration;

(2) an order of the court; or

(3) a notice of termination and an order of the court.

(e) If a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order in a depository established under this chapter is terminated, the person who obtained the order must file a notice of termination on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of termination of a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order to each of the depositories to which the protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order and a confidential form were sent. The clerk of the court shall maintain the notice of termination in the court's file.

(f) If a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order or form in a depository established under this chapter is extended or modified, the person who obtained the extension or modification must file a notice of extension or modification on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of extension or modification of a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order to each of the depositories to which the order and a confidential form were sent. The clerk of the court shall maintain the notice of extension or modification of a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order in the court's file.

(g) The clerk of a court that issued an order terminating a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order that is an ex parte order shall

C  
o  
p  
y



provide a copy of the order to the following:

- (1) Each party.
- (2) The law enforcement agency provided with a copy of a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order under subsection (a).

SECTION 4. IC 5-2-9-7, AS AMENDED BY P.L.52-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) Any information:

- (1) in a uniform statewide confidential form or any part of a confidential form prescribed by the division of state court administration that must be filed with a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order; or
  - (2) otherwise acquired concerning a protected person;
- is confidential and may not be divulged to any respondent or defendant.

(b) Information described in subsection (a) may only be used by:

- (1) a court;
- (2) a sheriff;
- (3) another law enforcement agency;
- (4) a prosecuting attorney; or
- (5) a court clerk;

to comply with a law concerning the distribution of the information.

SECTION 5. IC 5-2-9-8, AS AMENDED BY P.L.52-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. A law enforcement agency that receives a copy of a protective order, no contact order, workplace violence restraining order, **stay away order**, or child protective order shall enter the information received into the Indiana data and communication system (IDACS) computer under IC 10-13-3-35 upon receiving a copy of the order.

SECTION 6. IC 10-13-3-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35. (a) On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

- (1) All information concerning stolen or recovered property, including the following:
  - (A) Motor vehicles.
  - (B) Firearms.
  - (C) Securities.
  - (D) Boats.
  - (E) License plates.

C  
o  
p  
y



(F) Other stolen or recovered property.

(2) All information concerning fugitives charged with a crime, including information concerning extradition.

(3) All information concerning runaways, missing and unidentified persons, and missing children (as defined in IC 10-13-5-4), including information concerning the release of those persons to the custody of a parent or guardian.

(4) Information contained in a protective order, including any modifications or extensions issued by a court and filed with a law enforcement agency as required in IC 5-2-9-6(f).

(b) On a daily basis, all law enforcement agencies shall do the following:

(1) Enter all information concerning missing children (as defined in IC 10-13-5-4) into the National Crime Information Center's Missing Person File.

(2) Enter all information concerning warrants issued for a person who allegedly abducted or unlawfully retained a missing child into the National Crime Information Center's Wanted Person File.

(3) Enter all information concerning unidentified persons into the National Crime Information Center's Unidentified Person File.

(4) Enter all information concerning a protective order, a workplace violence restraining order, **a stay away order**, or a no contact order involving intimate partners into the National Crime Information Center's (NCIC) Protection Order File if the order qualifies under NCIC rules.

(c) If a protective order, a no contact order, **a stay order**, or a workplace violence restraining order is removed from a depository established under IC 5-2-9, the law enforcement agency responsible for the depository shall delete the information entered under subsection (a)(4) from the Indiana data and communication system (IDACS) computer.

SECTION 7. IC 34-26-5-3, AS AMENDED BY P.L.3-2008, SECTION 243, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The division of state court administration shall:

(1) develop and adopt:

(A) a petition for an order for protection;

(B) an order for protection, including:

(i) orders issued under this chapter;

(ii) ex parte orders;

(iii) no contact orders under IC 31 and IC 35;

(iv) forms relating to workplace violence restraining orders

C  
o  
p  
y





under IC 34-26-6; ~~and~~

(v) forms relating to a child protective order under IC 31-34-2.3; **and**

**(vi) stay away orders issued as a condition of pretrial release, including release on bail, personal recognizance, or pretrial diversion, or issued as a condition of probation;**

(C) a confidential form;

(D) a notice of modification or extension for an order for protection, a no contact order, a workplace violence restraining order, **a stay away order**, or a child protective order;

(E) a notice of termination for an order for protection, a no contact order, a workplace violence restraining order, **a stay away order**, or a child protective order; and

(F) any other uniform statewide forms necessary to maintain an accurate registry of orders; and

(2) provide the forms under subdivision (1) to the clerk of each court authorized to issue the orders.

(b) In addition to any other required information, a petition for an order for protection must contain a statement listing each civil or criminal action involving:

(1) either party; or

(2) a child of either party.

(c) The following statements must be printed in boldface type or in capital letters on an order for protection, a no contact order, a workplace violence restraining order, **a stay away order**, or a child protective order:

**VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.**

**IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE OR RESIDENCE OF ANY CHILD WHO IS THE SUBJECT OF THE ORDER, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.**

**PURSUANT TO 18 U.S.C. 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. 922(g), ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND AN OPPORTUNITY TO BE HEARD, IT IS A**

**C  
o  
p  
y**



FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR  
POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER IF  
THE PROTECTED PERSON IS:

(A) THE RESPONDENT'S CURRENT OR FORMER  
SPOUSE;

(B) A CURRENT OR FORMER PERSON WITH WHOM  
THE RESPONDENT RESIDED WHILE IN AN INTIMATE  
RELATIONSHIP; OR

(C) A PERSON WITH WHOM THE RESPONDENT HAS A  
CHILD.

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT  
THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES  
UNDER 18 U.S.C. 2261 AND 18 U.S.C. 2262.

(d) The clerk of the circuit court, or a person or entity designated by  
the clerk of the circuit court, shall provide to a person requesting an  
order for protection:

(1) the forms adopted under subsection (a);

(2) all other forms required to petition for an order for protection,  
including forms:

(A) necessary for service; and

(B) required under IC 31-21 (or IC 31-17-3 before its repeal);  
and

(3) clerical assistance in reading or completing the forms and  
filing the petition.

Clerical assistance provided by the clerk or court personnel under this  
section does not constitute the practice of law. The clerk of the circuit  
court may enter into a contract with a person or another entity to  
provide this assistance. A person, other than a person or other entity  
with whom the clerk has entered into a contract to provide assistance,  
who in good faith performs the duties the person is required to perform  
under this subsection is not liable for civil damages that might  
otherwise be imposed on the person as a result of the performance of  
those duties unless the person commits an act or omission that amounts  
to gross negligence or willful and wanton misconduct.

(e) A petition for an order for protection must be:

(1) verified or under oath under Trial Rule 11; and

(2) issued on the forms adopted under subsection (a).

(f) If an order for protection is issued under this chapter, the clerk  
shall comply with IC 5-2-9.

SECTION 8. IC 34-26-5-18, AS AMENDED BY P.L.52-2007,  
SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2009]: Sec. 18. The following orders are required to be

C  
o  
p  
y



entered into the Indiana data and communication system (IDACS) by a county sheriff or local law enforcement agency:

- (1) A no contact order issued under IC 31-32-13 in a juvenile case.
- (2) A no contact order issued under IC 31-34-20 in a child in need of services (CHINS) case.
- (3) A no contact order issued under IC 31-34-25 in a CHINS case.
- (4) A no contact order issued under IC 31-37-19 in a delinquency case.
- (5) A no contact order issued under IC 31-37-25 in a delinquency case.
- (6) A no contact order issued under IC 33-39-1-8 in a criminal case.
- (7) An order for protection issued under this chapter.
- (8) A workplace violence restraining order issued under IC 34-26-6.
- (9) A no contact order **or stay away order** issued under IC 35-33-8-3.2 in a criminal case.
- (10) A no contact order **or stay away order** issued under IC 35-38-2-2.3 in a criminal case.
- (11) A child protective order issued under IC 31-34-2.3.

SECTION 9. IC 35-33-8-1.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.8. As used in this chapter, "stay away order" means an order that prohibits a person from being at a specific location.**

SECTION 10. IC 35-33-8-3.2, AS AMENDED BY P.L.104-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
  - (A) execute a bail bond with sufficient solvent sureties;
  - (B) deposit cash or securities in an amount equal to the bail;
  - (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
  - (D) post a real estate bond; or
  - (E) perform any combination of the requirements described in clauses (A) through (D).

C  
o  
p  
y



If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release, **including issuing a stay away order.**

(4) Require the defendant to refrain from any direct or indirect contact with an individual, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the

C  
o  
p  
y



1 court shall determine whether the defendant must pay the pretrial  
2 services fee under section 3.3 of this chapter.

3 (6) Release the defendant into the care of a qualified person or  
4 organization responsible for supervising the defendant and  
5 assisting the defendant in appearing in court. The supervisor shall  
6 maintain reasonable contact with the defendant in order to assist  
7 the defendant in making arrangements to appear in court and,  
8 where appropriate, shall accompany the defendant to court. The  
9 supervisor need not be financially responsible for the defendant.

10 (7) Release the defendant on personal recognizance unless:

11 (A) the state presents evidence relevant to a risk by the  
12 defendant:

13 (i) of nonappearance; or

14 (ii) to the physical safety of the public; and

15 (B) the court finds by a preponderance of the evidence that the  
16 risk exists.

17 (8) Impose any other reasonable restrictions designed to assure  
18 the defendant's presence in court or the physical safety of another  
19 person or the community.

20 (b) Within thirty (30) days after disposition of the charges against  
21 the defendant, the court that admitted the defendant to bail shall order  
22 the clerk to remit the amount of the deposit remaining under subsection  
23 (a)(2) to the defendant. The portion of the deposit that is not remitted  
24 to the defendant shall be deposited by the clerk in the supplemental  
25 public defender services fund established under IC 33-40-3.

26 (c) For purposes of subsection (b), "disposition" occurs when the  
27 indictment or information is dismissed or the defendant is acquitted or  
28 convicted of the charges.

29 (d) Except as provided in subsection (e), the clerk of the court shall:

30 (1) collect a fee of five dollars (\$5) from each bond or deposit  
31 required under subsection (a)(1); and

32 (2) retain a fee of five dollars (\$5) from each deposit under  
33 subsection (a)(2).

34 The clerk of the court shall semiannually remit the fees collected under  
35 this subsection to the board of trustees of the public employees'  
36 retirement fund for deposit in the special death benefit fund. The fee  
37 required by subdivision (2) is in addition to the administrative fee  
38 retained under subsection (a)(2).

39 (e) With the approval of the clerk of the court, the county sheriff  
40 may collect the bail posted under this section. The county sheriff shall  
41 remit the bail to the clerk of the court by the following business day  
42 and remit monthly the five dollar (\$5) special death benefit fee to the

C  
o  
p  
y



1 county auditor.

2 (f) When a court imposes a condition of bail described in subsection  
3 (a)(4):

4 (1) the clerk of the court shall comply with IC 5-2-9; and

5 (2) the prosecuting attorney shall file a confidential form  
6 prescribed or approved by the division of state court  
7 administration with the clerk.

8 SECTION 11. IC 35-38-1-7.1, AS AMENDED BY P.L.119-2008,  
9 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2009]: Sec. 7.1. (a) In determining what sentence to impose  
11 for a crime, the court may consider the following aggravating  
12 circumstances:

13 (1) The harm, injury, loss, or damage suffered by the victim of an  
14 offense was:

15 (A) significant; and

16 (B) greater than the elements necessary to prove the  
17 commission of the offense.

18 (2) The person has a history of criminal or delinquent behavior.

19 (3) The victim of the offense was less than twelve (12) years of  
20 age or at least sixty-five (65) years of age at the time the person  
21 committed the offense.

22 (4) The person:

23 (A) committed a crime of violence (IC 35-50-1-2); and

24 (B) knowingly committed the offense in the presence or within  
25 hearing of an individual who:

26 (i) was less than eighteen (18) years of age at the time the  
27 person committed the offense; and

28 (ii) is not the victim of the offense.

29 (5) The person violated a protective order issued against the  
30 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or  
31 IC 34-4-5.1 before their repeal), a workplace violence restraining  
32 order issued against the person under IC 34-26-6, **a stay away**  
33 **order**, or a no contact order issued against the person.

34 (6) The person has recently violated the conditions of any  
35 probation, parole, pardon, community corrections placement, or  
36 pretrial release granted to the person.

37 (7) The victim of the offense was:

38 (A) a person with a disability (as defined in IC 27-7-6-12), and  
39 the defendant knew or should have known that the victim was  
40 a person with a disability; or

41 (B) mentally or physically infirm.

42 (8) The person was in a position having care, custody, or control

C  
o  
p  
y



of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9;  
and

(B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana;

C  
o  
p  
y



1 regardless of the presence or absence of aggravating circumstances or  
2 mitigating circumstances.

3 SECTION 12. IC 35-38-2-0.5 IS ADDED TO THE INDIANA  
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. As used in this chapter, "stay**  
6 **away order" means an order that prohibits a person from being at**  
7 **a specific location.**

8 SECTION 13. IC 35-38-2-2.3, AS AMENDED BY P.L.3-2008,  
9 SECTION 249, IS AMENDED TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 2009]: Sec. 2.3. (a) As a condition of probation,  
11 the court may require a person to do a combination of the following:

12 (1) Work faithfully at suitable employment or faithfully pursue a  
13 course of study or career and technical education that will equip  
14 the person for suitable employment.

15 (2) Undergo available medical or psychiatric treatment and  
16 remain in a specified institution if required for that purpose.

17 (3) Attend or reside in a facility established for the instruction,  
18 recreation, or residence of persons on probation.

19 (4) Support the person's dependents and meet other family  
20 responsibilities.

21 (5) Make restitution or reparation to the victim of the crime for  
22 damage or injury that was sustained by the victim. When  
23 restitution or reparation is a condition of probation, the court shall  
24 fix the amount, which may not exceed an amount the person can  
25 or will be able to pay, and shall fix the manner of performance.

26 (6) Execute a repayment agreement with the appropriate  
27 governmental entity to repay the full amount of public relief or  
28 assistance wrongfully received, and make repayments according  
29 to a repayment schedule set out in the agreement.

30 (7) Pay a fine authorized by IC 35-50.

31 (8) Refrain from possessing a firearm or other deadly weapon  
32 unless granted written permission by the court or the person's  
33 probation officer.

34 (9) Report to a probation officer at reasonable times as directed  
35 by the court or the probation officer.

36 (10) Permit the person's probation officer to visit the person at  
37 reasonable times at the person's home or elsewhere.

38 (11) Remain within the jurisdiction of the court, unless granted  
39 permission to leave by the court or by the person's probation  
40 officer.

41 (12) Answer all reasonable inquiries by the court or the person's  
42 probation officer and promptly notify the court or probation

C  
o  
p  
y





officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) the person had been convicted of an offense relating to a controlled substance and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the

**C**  
**O**  
**P**  
**Y**



- 1 person; and
- 2 (C) takes into consideration and gives priority to any other
- 3 restitution, reparation, repayment, or fine the person is
- 4 required to pay under this section.
- 5 (21) Refrain from owning, harboring, or training an animal.
- 6 (22) Participate in a reentry court program.
- 7 **(23) Refrain from going to a specific location, which may be**
- 8 **ordered in a stay away order.**
- 9 (b) When a person is placed on probation, the person shall be given
- 10 a written statement specifying:
- 11 (1) the conditions of probation; and
- 12 (2) that if the person violates a condition of probation during the
- 13 probationary period, a petition to revoke probation may be filed
- 14 before the earlier of the following:
- 15 (A) One (1) year after the termination of probation.
- 16 (B) Forty-five (45) days after the state receives notice of the
- 17 violation.
- 18 (c) As a condition of probation, the court may require that the
- 19 person serve a term of imprisonment in an appropriate facility at the
- 20 time or intervals (consecutive or intermittent) within the period of
- 21 probation the court determines.
- 22 (d) Intermittent service may be required only for a term of not more
- 23 than sixty (60) days and must be served in the county or local penal
- 24 facility. The intermittent term is computed on the basis of the actual
- 25 days spent in confinement and shall be completed within one (1) year.
- 26 A person does not earn credit time while serving an intermittent term
- 27 of imprisonment under this subsection. When the court orders
- 28 intermittent service, the court shall state:
- 29 (1) the term of imprisonment;
- 30 (2) the days or parts of days during which a person is to be
- 31 confined; and
- 32 (3) the conditions.
- 33 (e) Supervision of a person may be transferred from the court that
- 34 placed the person on probation to a court of another jurisdiction, with
- 35 the concurrence of both courts. Retransfers of supervision may occur
- 36 in the same manner. This subsection does not apply to transfers made
- 37 under IC 11-13-4 or IC 11-13-5.
- 38 (f) When a court imposes a condition of probation described in
- 39 subsection (a)(17):
- 40 (1) the clerk of the court shall comply with IC 5-2-9; and
- 41 (2) the prosecuting attorney shall file a confidential form
- 42 prescribed or approved by the division of state court

C  
o  
p  
y



administration with the clerk.

(g) As a condition of probation, a court shall require a person:

(1) convicted of an offense described in IC 10-13-6-10;

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

SECTION 14. IC 35-46-1-15.1, AS AMENDED BY P.L.104-2008, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15.1. A person who knowingly or intentionally violates:

(1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);

(2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);

(3) a workplace violence restraining order issued under IC 34-26-6;

(4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) a no contact order **or a stay away order** issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion;

(6) a no contact order **or a stay away order** issued as a condition of probation;

(7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(10) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (9);

C  
o  
p  
y



(11) an order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(12) an order issued under IC 35-33-8-3.2; or

(13) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

**C**  
**O**  
**P**  
**Y**

